

MINUTES
REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS
Monday, July 21, at 9:00 a.m.
State Capitol Building, Room 303
Helena, MT

PRESENT: Governor Brian Schweitzer, Attorney General Mike McGrath, Superintendent of Public Instruction Linda McCulloch, and Secretary of State Brad Johnson.

VIA TELEPHONE: Auditor John Morrison

Ms. McCulloch moved for approval of the minutes from the June 16, 2008, meeting of the Board of Land Commissioners. Seconded by Mr. Johnson. Motion carried unanimously.

BUSINESS CONSIDERED:

708-1 FWP: RIVERSIDE INN FISHING ACCESS SITE

Ms. Sexton stated this is a fee title purchase of \$460,000 by FWP for 3.7 acres on the Stillwater River near Absarokee. The Riverside Inn access site would be accessible for boating and a take-out site on the Stillwater-Rosebud confluence.

Paul Sihler, FWP Field Services Administrator, stated the property is located along the Stillwater River where a bridge replacement resulted in a loss of access to the river and parking problems along the road. FWP intends to use the old Riverside Inn as an administrative site, with a potential future use as a recreational rental. The \$460,000 purchase price would come from the Access Montana Program, Fishing Access Site Program, and the FWP Conservation Trust. The cost is 32 percent below the original asking price.

FWP received 50 written comments and 25 people attended the public hearing. The majority of commenters supported the project. There had been concerns from neighbors regarding noise, trash, and late night activities, so FWP has decided not permit overnight camping at the site. The weed management would be addressed by FWP's Integrated Weed Management Program.

Motion made by Mr. McGrath to approve purchase of the access site. Seconded by Mr. Johnson. Carried unanimously.

708-2 SET MINIMUM BID FOR LAND BANKING PARCELS:

708-2A FLATHEAD COUNTY

Ms. Sexton stated this proposal is for setting the minimum bid for land banking Parcel No. 202 in Flathead County. It is comprised of 80 timbered acres and located near Kalispell, off of Browns Meadow Road. The parcel has no public access. The parcel had been before the Land Board previously, and those issues regarding the timber have been resolved. The DNRC recommends setting the minimum bid at the appraised value of \$230,000 and reserving the right to harvest the merchantable timber (with an estimated value of \$156,800). The appraisal does not reflect the value of the timber harvest.

Motion made by Mr. Johnson to set the minimum bid for the Flathead County parcel. Seconded by Ms. McCulloch.

Governor Schweitzer asked if the potential buyers would agree to the extended time for timber harvesting?

Ms. Sexton stated that given the location and the timber quality, it would be a defensible space harvest which rendered the terms agreeable to the buyers.

Motion carried unanimously.

708-2B HILL COUNTY

Ms. Sexton stated this is to set a minimum bids for several land banking parcels in Hill County. One parcel was nominated by the lessee and the rest were nominated by the DNRC. All parcels are isolated. The parcels will be divided out to offer potential pooling opportunities at later date. Ms. Sexton recommended the minimum bid be set at the appraised values, all of which are with access.

Motion made by Ms. McCulloch to set minimum bids for Hill County. Seconded by Mr. McGrath. Carried unanimously.

708-2C LEWIS AND CLARK COUNTY

Ms. Sexton stated this is to set minimum bids on three parcels in Lewis and Clark County that were nominated by the Dearborn Ranch. The parcels are grasslands used for grazing. Two parcels are surrounded on four sides by the Dearborn Ranch. The third parcel is bordered on three sides by the ranch and on one side by the Canyon Cattle Company. All parcels are inaccessible. The parcels were appraised with and without access, and the DNRC recommends that the minimum bid be set with access.

Motion made by Mr. Johnson to set minimum bids for Lewis and Clark County. Seconded by Mr. McGrath. Carried unanimously.

708-2D LIBERTY COUNTY

Ms. Sexton stated this is to set minimum bids for three land banking parcels in Liberty County. The DNRC recommends the minimum be set at the appraised value with access.

Motion made by Ms. McCulloch to set minimum bids for Liberty County. Seconded by Mr. McGrath. Carried unanimously.

708-3 PRELIMINARY APPROVAL FOR SALE OF LAND BANKING PARCELS

Ms. Sexton stated this is for preliminary approval of two parcels in Gallatin County. Parcel No. 540 is a farmstead with trees. The DNRC compared possible income from leasing and profits from sale and determined land banking was the best option. The other parcel is grazing land, but is bounded by I-90 on the south side and the railroad on the north side and has been unproductive.

Motion made by Mr. McGrath for preliminary approval. Seconded by Ms. McCulloch. Carried unanimously.

708-4 FINAL APPROVAL FOR LAND BANKING ACQUISITION – TUPPER LAKE

Ms. Sexton stated this proposal is for final approval of the land banking acquisition of Tupper Lake. The land is primarily forested with excellent wildlife, high timber value, and some ponds and wetlands. The land currently has an easement on it. The purchase price is \$715 per acre for a total of \$1,271,000, with a closing date of July 28, 2008.

Motion made by Mr. McGrath for final approval. Seconded by Mr. Johnson.

Governor Schweitzer stated that the selling price for this land is a good deal for the state.

Motion carried unanimously.

708-5 PROPOSED LEASE AGREEMENT – LEWIS AND CLARK COMMERCE CENTER
708-6 PROPOSED LEASE AGREEMENT – MANDEVILLE PARCEL

708-5 and 708-6 were considered as a block.

Ms. Sexton stated that 708-5 and 708-6 are proposed lease agreements for trust land in Bozeman. The first parcel (708-5) is 5.3 acres located on the corner of Simmental Way and Boot Hill Court. Ricochet Development would lease for a term of 25 years with options to renew for two additional 25-year periods, for a maximum term of 75 years. The rent would be 6.2 percent of the market value at full operations with a three percent annual escalation. The lessee would be responsible for extension and construction of all improvements, and all improvements would revert to the DNRC at termination of the lease. The current development on the parcel has brought very little income to the DNRC. Ms. Sexton complimented the Real Estate Management team for their work on the lease arrangement.

The proposed lease on the Mandeville parcel (708-6) is for a 10-acre, long-term lease of 33 years with options for renewal for two additional 33-year periods, for a maximum term of 99 years. The rental rate would be 8.98 percent, which would increase by 1.5 percent annually. In the thirty-fourth year, the lease would be reappraised. The lease would be held by Space Bank for use as mini-storage facilities, enclosed RV storage, and light industrial incubator space. Incubator space is defined as "units used by crafts people, welders, landscapers, and others who may have outgrown their garage but are not ready for a 4000 square foot warehouse." Utilities are adjacent and the lessee would pay taxes and special assessments.

Motion made by Ms. McCulloch to approve 708-5 and 708-6. Seconded by Mr. Johnson.

The Land Board concurred that the return on the parcels was good for the trust.

Motion carried unanimously.

708-7 REMB 2008 PROJECT MANAGEMENT LIST

Informational item: No action required

Ms. Sexton stated the Real Estate Management Plan requires the DNRC to come before the Land Board annually with an updated list of projects being developed as part of the Record of Decision (ROD). Administrative rulemaking has initiated based on and will be completed by the end of 2008. The ROD for the Real Estate Management Bureau was finalized in 2005.

708-8 ASH GROVE CEMENT V. JEFFERSON COUNTY & THE STATE OF MONTANA
(DV-06-10516) – PROPOSED SETTLEMENT AGREEMENT

Ms. Sexton stated this is for approval of a settlement agreement with Jefferson County and Ash Grove Cement. It is a land banking parcel on Microwave Hill with questionable legal access. The matter was been reviewed by the DNRC legal staff and outside counsel. The settlement allows the state and Ash Grove Cement to exchange reciprocal easements to allow the state legal access to the trust lands.

Motion made by Mr. Johnson to approve the settlement. Seconded by Ms. McCulloch. Carried unanimously.

708-9 APPROVAL FOR COMMUNITIZATION AGREEMENT – NANCE PETROLEUM

Ms. Sexton stated this proposal is for a communitization agreement for 320 acres in Roosevelt County. The DNRC's tract comprises 25 percent of the communitized area of which the DNRC will receive a commensurate share of production.

Motion made by Ms. McCulloch to approve the communitization. Seconded by Mr. Johnson. Carried unanimously.

708-10 RIGHT-OF-WAY APPLICATIONS

Ms. Sexton stated the rights-of-way include fiber optics, which the AT&T Corporation inherited from Touch America, and a navigable river crossing which would run a cable to a cabin across the Blackfoot River.

Motion made by Ms. McCulloch to approve the rights-of-way. Seconded by Mr. McGrath. Carried unanimously.

PUBLIC COMMENT:

Mark Nogle, rancher from Casper Wyoming, stated that in 2007 he purchased a 14,500 acres ranch in Rosebud County and has had problems with an historical easement on a state section. The property deeded to the ranch is "L" shaped and that there was no legal access across the state section that bordered the property. A stipulation of the purchase was obtaining legal access. The initial special use license/easement arrangement granted by the Land Board was unacceptable. A request was made for an easement of the entire ranch, but there were potential problems if the property ever changed ownership or was divided. Mr. Nogle also stated that he had purchased a modular housing unit with the intent of use for employee housing, but was informed that the easement only allowed for one single-family residence.

Governor Schweitzer suggested that the members of the Land Board meet with the DNRC to glean historical background and assess how best to address Mr. Nogle's concerns since his concerns were not actionable by the Land Board at this meeting.

Mr. McGrath asked if the concern was regarding fee charges to obtain easements?

Mr. Nogle said the ranch is devalued and it is troublesome to trade or sell parcels with neighbors under the encumbrances of the existing proposed easements.

Mr. McGrath asked if Mr. Nogle would consider a reciprocal access conveyance fee?

Mr. Nogle said no. He reiterated the impracticalities of the easement supported by the Land Board.

Governor Schweitzer suggested that any Land Board members with additional questions should speak with Mr. Nogle after the meeting adjourned. He asked Director Sexton to brief the Land Board staff regarding Mr. Nogle's concerns.

Ms. Sexton stated that her staff would brief the Land Board further.

Motion to adjourn made by Mr. Johnson. Seconded by Mr. McGrath.